

EPSTEIN SACKS PLLC
ATTORNEYS AT LAW
100 LAFAYETTE STREET
SUITE 502
NEW YORK, N.Y. 10013
(212) 684-1230

BENNETT M. EPSTEIN: (917) 653-7116
SARAH M. SACKS: (917) 566-6196

April 26, 2021

Hon. Jesse M. Furman
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, NY 10007

Filed on ECF

United States v. Devonte Brown
20 Cr. 135 (JMF)

Dear Judge Furman:

We represent the defendant pursuant to the Criminal Justice Act. We write to respectfully request that the Court postpone Mr. Brown's surrender date, currently scheduled for May 3, 2021. For the reasons stated herein, we submit that "compelling reasons" continue to exist warranting Mr. Brown's temporary release.¹

¹ As the Court will recall, on April 30, 2020, Your Honor granted in part the Government's motion to revoke Mr. Brown's bail conditions, but also made the finding that there was a "compelling reason" justifying Mr. Brown's temporary release in light of the current conditions in prison as a result of the COVID-19 pandemic. The Court directed Mr. Brown to surrender on June 29, 2020 "unless the Court [found] prior to that date – pursuant to a letter motion filed by Defendant – that 'compelling' reasons still exist to extend the Defendant's release." (Dkt. No. 118.) Your Honor has granted applications to extend Mr. Brown's release on this basis since that time. In denying the Government's motion for reconsideration of the Court's order granting the first extension, the Court noted:

Although conditions in New York City have undoubtedly improved dramatically, the Court needs more confidence that the crisis has passed with respect to jails and

The Court's reasoning for previously postponing Mr. Brown's surrender date remains true. While the rate of COVID-19 infections across the United States is not as high as it was mid-winter, the number of new infections in this country and region remains significant. Over the past week alone, over 58,000 new cases of COVID-19 have been reported daily across the United States, including thousands of new cases per day in New York City and New York State. (*Covid in the U.S.: Latest Map and Case Count*, Apr. 26, 2021, THE NEW YORK TIMES, found at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.) With the virus continuing to circulate, and the spread of new more contagious and possibly more lethal variants, the pandemic is far from over.

The number of infections in prisons also remains disproportionately high. Earlier this month, the New York Times reported that the rate of infection inside prison has been *more than three times* as high as elsewhere in the United States (*i.e.*, 34 per 100 incarcerated people are being infected, as opposed to 9 per 100 people outside of prison). (*Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System*, Apr. 10, 2021, THE NEW YORK TIMES, found at <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>.) In federal prison facilities, at least 39 percent of detainees are known to have been infected, and the true count is most likely higher because of the lack of testing. (*See id.*)

Despite its efforts to contain the virus, both the MCC and MDC have struggled with COVID-19 outbreaks. As of April 20, 2021, the MCC has reported 87 positive tests among its detainees and 63 positive tests among its staff. The MDC has reported 395 positive tests among its detainees and 116 positive tests among its staff. (*See* Apr. 20, 2021 Letter to the Honorable Margo K. Brodie from MCC Interim Warden R. Heisner and MDC Warden H. Tellez, found at https://www.nyed.uscourts.gov/pub/bop/20210421_BOP_Report.pdf.) Since our last letter request, an inmate at the MDC died from the virus. (Noah Goldberg, *COVID surge continues at Brooklyn federal jail as officials fail to note inmate who died of virus*, Feb. 10, 2021, NEW YORK DAILY NEWS, found at <https://www.nydailynews.com/coronavirus/ny-covid-mdc-federal-jail-inmate-dead-surge-cases-brooklyn-20210210-xbcwjmjnf5gajdgsfakwitfskq-story.html>.) The MCC and MDC vaccination rates also remain low and are significantly lower than the current vaccination rate in New York as a whole. (*Compare id. with* New York State's Covid Vaccine Tracker website as of Apr. 22, 2021, found at <https://covid19vaccine.health.ny.gov/covid-19-vaccine-tracker> (showing that approximately 11 percent of inmates at the MCC and 15 percent at the MDC have had at least one vaccine dose, while 30 percent of New York State residents have been fully vaccinated and approximately 43 percent have had at least one dose).) We have also learned that the MCC had stopped providing the vaccine in light of the "pause" on the Johnson & Johnson vaccine. Given the poor living conditions and lack of social distancing, coupled with the low rate of vaccinations, the real threat of contracting the virus at these facilities remains disproportionately high.

prisons before it concludes that compelling reasons no longer exist to maintain Defendant's temporary release.

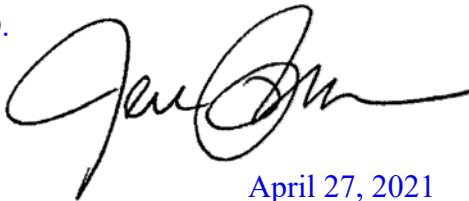
(Dkt. No. 153.)

For these reasons, we respectfully submit that “compelling reasons” still exist warranting Mr. Brown’s temporary release. We request that Your Honor postpone Mr. Brown’s surrender date for an additional two months, through Tuesday July 5, 2021. We submit that postponing his surrender to such date will allow the Court to reassess the current state of the pandemic and its effect on the local prison facilities during the summer, at a time when the rate of infections will hopefully have improved drastically. This will also allow Mr. Brown time to become fully vaccinated. (He has his first vaccine appointment scheduled for Saturday May 1st.) We have been in touch with Mr. Brown’s pretrial services officer, and he advises that Mr. Brown has been compliant with the terms of his home incarceration, and that pretrial services takes no position with respect to this application. We have consulted with the Government and they have asked us to include the following statement:

For the reasons previously stated in its previous oppositions (Docket Nos. 95, 100, 152), including the fact that the defendant does not suffer from any COVID-19 comorbidities, the Government continues to oppose the defendant’s temporary release. As of April 23, 2021, all 600 COVID-19 vaccine centers run by New York City are open for walk-in appointments. Based on data from the BOP sent to the Eastern District of New York, the Government also notes that there have been 0 inmates at MCC who have tested positive for COVID-19 between on or about February 23, 2021 and April 22, 2021; and 13 inmates at MDC who have tested positive between on or about February 23, 2021 and April 22, 2021. This District has also resumed in-court proceedings and jury trials, and New York City has eased restrictions on indoor dining, schools, and out-of-state travelers.

On or about March 30, 2021, a grand jury also returned an S5 superseding indictment charging the defendant with using and carrying a firearm in furtherance of drug trafficking, in violation of Title 18, United States Code, Section 924(c); and being a felon in possession of a firearm and ammunition, in violation of Title 18, United States Code, Section 922(g). These charges relate, in part, to a loaded gun seized from the defendant on the night of the defendant’s arrest in this case on or about March 18, 2020.²

The Defendant's surrender date is hereby extended to June 7, 2021 - at which point, assuming he gets the Pfizer vaccine, he will be fully vaccinated. (If that assumption is incorrect, counsel should advise the Court.) The Clerk of Court is directed to terminate Doc. #381. SO ORDERED.



April 27, 2021

Respectfully submitted,

Sarah M. Sacks

² As the Court may recall, these are the same allegations the Government pointed to when they asked the Court to revoke Mr. Brown’s bail in the first place.